

REGULATORY COMMITTEE

23<sup>rd</sup> JULY 2003

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**WEST GRIMSTEAD: PROPOSED ADDITION OF FOOTPATH 26  
TO DEFINITIVE MAP**

**Purpose of Report**

1. To consider and comment on an objection received to the making of an Order under Section 53(3) of the Wildlife and Countryside Act 1981 to add a new Footpath No. 26 to the Definitive Map and Statement at West Grimstead, near Salisbury, and to recommend that the Order be submitted to the Secretary of State for the Environment for consideration and confirmation. The route of the proposed footpath is shown on the plan at **Appendix 1**.

**Background**

2. On 10<sup>th</sup> March 2002 Mrs. Adgie, on behalf of the residents of West Grimstead, applied for an Order under Schedule 14 and Section 53(2) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by adding a footpath leading from the C324 road into the Woods known as Redlynch Plantation, and on up to the Downs leading to the Byway at Pepperbox Hill, over land forming part of the property known as Manor Farm.
3. In support of the application user evidence forms were submitted from 22 people.
4. All the witnesses claimed to have used the way for a period greater than 20 years, openly and without challenge. The witness statements are summarised at **Appendix 2**. A copy of the evidence forms will be available for inspection in the **Members' Room** prior to the meeting.
5. The evidence of use of the alleged footpath is said to have occurred whilst Manor Farm was in the ownership of Mr. Read (Senior); then from 1977 in the tenancy of Messrs. Malcolm and Graham Read; and from 1998 in the ownership of Graham Read. The Read family had owned/occupied the farm for at least three generations. During the Summer of 2001 Manor Farm was sold to a Mr. and Mrs. Ball from Sussex.
6. The catalyst to the Schedule 14 application was the erection of fencing and five bar gates around the perimeter of Mr. and Mrs. Ball's land during March/April 2002.

## **Consultations**

7. Consultations with statutory bodies, user groups and the landowner were undertaken on 19<sup>th</sup> April 2002. The responses are as follows:
8. **Mr. and Mrs. Ball** - via the land agent Mr. Dallyn (of Symonds & Sampson, Sturminster Newton, Dorset) would be making an objection once the Order had been made.
9. **Grimstead Parish Council** - in favour of adding the well used route to the Definitive Map and Statement.
10. **Salisbury District Council** - no comments or observations on the Order.
11. **The Ramblers Association** - content with the proposals.
12. **Mr. D. Tilbury** representing the Byways and Bridleways Trust - no comments or observations on the Order.
13. In considering all the relevant evidence and the legislation to be taken into account, a Modification Order was made to add the footpath to the Definitive Map and Statement.
14. The Order was made on 12<sup>th</sup> December 2002 and advertised in The Salisbury Times on 19<sup>th</sup> December 2002. The Order seeks to modify the Definitive Map and Statement by adding a new footpath across land forming part of Manor Farm, West Grimstead.

## **Objections/Representations**

15. **Mr. and Mrs. Ball** lodged a formal objection to the Order which has been sustained. They do not consider the way has been continuously used 'as of right'.
16. **Solicitors** (Boyes Turner, Reading) acting for **Mr. and Mrs. Ball**, wrote on 6<sup>th</sup> May 2003. They requested the letter be submitted for consideration with this report. The substance of this letter was that tenants of land are unable to dedicate a public highway over said land. Case law was cited establishing this fact. The letter is attached at **Appendix 3**.

## **Comment**

There is evidence of use given by the witness from 1976 to 2002. The use was without challenge, continuous throughout the period and without permission from the landowner. Boyes Turner, Solicitors acting on behalf of Mr. and Mrs. Ball, have confirmed in their letter dated 6<sup>th</sup> May 2003 "There is no evidence that the freeholder of the land gave permission for anyone to walk over Manor Farm." Public access on the land has not been denied. In a letter dated 10<sup>th</sup> February 2003, Boyes Turner stated "The previous tenants and freehold owners of Manor Farm have from time to time permitted members of the village of West Grimstead to walk on the land." There is no evidence of any former owner of the land granting permission to use the claimed footpath.

17. **Mr. Dolding** (a resident of Salisbury) made a representation about the Order noting the dates during which the Read brothers were joint tenants and the public use made of the path.

### **Main Considerations for the Council**

#### Legal points to consider

18. Section 53 of the Wildlife and Countryside Act 1981 deals with the duty to keep the Definitive Map and Statement under continuous review.
19. Section 53 (2) (b) states:
- “As regards every definitive map and statement, the surveying authority shall:*
- (b) as from that date (the commencement date), keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.*
20. The event referred to in Subsection (2)(b) relevant to this case is set out in Section 53(3)(c):
- (c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:*
- (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this Part applies.”*
21. The County Council has a duty to investigate the application made by Mrs. Adgie on behalf of the residents of West Grimstead.
22. As far as Section 53(3) is concerned, the relevant Subsection is 53(3)(c)(i) where the authority has discovered/been presented with witness statement evidence which shows that a right of way can be reasonably alleged to subsist.
23. No legal document such as a creation agreement or court order has been discovered to show that the claimed way has already been created.
24. In considering and determining the application, the County Council must have regard to 'all other relevant evidence available to them', as the statute demands. However, no documentary evidence has been discovered by the Council to support the application. The application therefore is solely reliant upon presumed dedication through use of the claimed route.

25. Dedication of a way as highway can be presumed after public use for 20 years provided it satisfies the requirements of Section 31 of the Highways Act 1980. The Section states:
- (1) *Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*
26. The Section provides that where a way has been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway - unless there is sufficient evidence that there was no intention during that period to dedicate the way.
27. The term 'as of right' means that people using the way must not be reliant on being given permission to use the path by the owner of the land over which the path runs.
28. Malcolm Read (former tenant until 1998 when he purchased the property) has provided verbal confirmation to the County Council that no permission was given to the public to use the ways over the land. He was aware that the public used the path across this land but no measures were taken to prevent them from doing so by the landowners throughout the period of use.
29. The case of R. v. Oxford County Council ex parte Sunningwell Parish Council (1999) considered the issue of public use of a way. Lord Hoffman presiding stated “...*the actual state of mind of the road user is plainly irrelevant ....*”. It is immaterial, therefore, whether the public thought the way was a 'public' path or not.
30. The Hearing concluded that it is no longer necessary to establish whether the users believe they have a legal right to use the land. Instead, it should be shown that use has been without force, without secrecy and without permission.
31. The witnesses all state that the ways were available for use by anyone, and that in some respects the presence of people over the land at specific times was useful to the Read Brothers to inform of any mishaps such as fallen animals etc.
32. The use of the way must be without interruption. Once the 20 year uninterrupted use 'as of right' has been proved, the burden then moves to the landowner to show that he had no intention to dedicate, ie evidence of any overt acts by the landowner to deter the public from using the way, or conversely to permit the public to do so. No evidence has been provided by the landowners.
33. None of the witnesses provide evidence of any overt acts on the part of the landowners to show prevention of public use of these ways.

### **Environmental Impact of the Recommendation**

34. None.

### **Risk Assessment**

35. None.

### **Financial Implications**

36. Costs will be incurred associated with attending a Public Inquiry for which budgetary provision is made.

### **Conclusions**

37. Officers are satisfied that the legal test in Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 has been satisfied. This being the case, the Council is statutorily obliged to forward the Order to the Planning Inspectorate for determination.

### **Reasons for Recommendation**

38. Officers consider that the criteria set out in the legislation have been met and the statutory duty placed on the County Council requires that the way should be added to the Definitive Map and Statement. Consequently, the Order must be forwarded to the Planning Inspectorate.
39. The legislation states that the Planning Inspectorate is required to determine the matter once an objection is received.

### **Recommendation**

40. That the Order to add a new footpath No. 26 at West Grimstead be submitted to the Secretary of State, together with the objection letter, with the recommendation that the Order be confirmed without modification.

**GEORGE BATTEN**

Director of Environmental Services

Report Author

**BARBARA TALBOTT**

Rights of Way Officer

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**The following unpublished documents have been relied on in the preparation of this Report:**

Correspondence with Parish and District Councils, User Groups, other interested bodies and members of the public.

